

REMARKS

In the Office Action dated March 22, 2007, the Examiner rejected claims 1-5, 8-12, and 14-20 under 35 U.S.C. § 103(a) as obvious in light of the paper by Mehmet D. Akin, "Using Object Oriented Design Patterns to Develop an Interactive Command System for CAD Software with Undo and Redo Support," 2000, pp. 410-417 (hereinafter *Akin*). The Applicant, respectfully points out, however, that the rejections of record are improper because *Akin* has not been shown to be prior art.

The Akin reference used by the Examiner as the sole basis for the Current Action was submitted by the Applicant in a Supplemental Information Disclosure Statement dated December 21, 2006. The Applicant submitted this reference in an abundance of caution, since it had been cited by a foreign examiner during the prosecution of a related application. The Applicant respectfully points out, however, that there is no verifiable publication (or publication date) of *Akin*. The copy of the paper submitted by the Applicant in the supplemental IDS is a copy as given to the Applicant during foreign prosecution of a related application. The copy has no publication date, and despite substantial searching by the Applicant, no copy of an actual publication (or publication date) can be found.

The Applicant respectfully reminds the Examiner that the burden of establishing proof of publication and the date of that publication is on the Examiner. *See* M.P.E.P. §2128 et seq.; *see also In re Wyer*, 655 F.2d 221, 227 (CCPA 1981) (finding that "the one who wishes to characterize information, in whatever form it may be, as a 'printed publication' . . . should produce sufficient proof of its dissemination or that it has otherwise been available and accessible . . ."). Since no such evidence has been provided, *Akin* is not prior art. Therefore, the Examiner has failed to establish a *prima facie* case for rejecting the pending claims, and the Applicant respectfully asks the Examiner to withdraw the rejections.


In view of the above, Applicant believes the pending application is in condition for allowance.

Applicant believes that a fee in the amount of **\$450.00** is due with this response, and that this amount is covered in the accompanying Fee Transmittal; however, please charge any underpayment or overpayment to Deposit Account No. 08-2025, under Order No. 10001114-1 from which the undersigned is authorized to draw.

Dated: August 21, 2007

Respectfully submitted,

Daniel Garfinkel et al.

By 

Jody Bishop

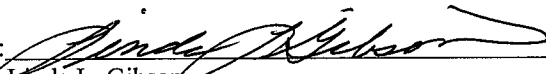
Reg. No.: 44,034

Attorney for Applicant

Telephone: 214 855-8007

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the U. S. Patent and Trademark Office electronic filing system in accordance with § 1.6(a)(4).

By:


Linda L. Gibson

Date of Transmission: August 21, 2007